U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE M. STONE and DEPARTMENT OF TRANSPORTATION, TRANSPORATION SECURITY ADMINISTRATION, LONG ISLAND MacARTHUR AIRPORT, Ronkonkoma, NY

Docket No. 03-1721; Submitted on the Record;
Issued October 14, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on September 17, 2002, as alleged.

On October 4, 2002 appellant, then a 39-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2002 he twisted his ankle while performing duties and injured his ankle and lower back in a fall in E-Lot. He listed the nature of the injury as "twisted left ankle, lower back mulch syndrome." He listed the time of the injury as 20:50 and the place of injury as "Long Island MacArthur Airport, Checkpoint and E-Lot." Appellant's regular work hours were listed as 12:30 to 21:00. The employing establishment controverted the claim, noting as follows:

> "During an interview with [appellant's] supervisors and [appellant] regarding behavioral and professional misconduct, a determination was made that [appellant] would resign his position with [the employing establishment]. [Appellant] stated [that] he could not respond to exit interview due to a doctor's appointment. Regarding the appointment, [appellant] claimed he had fallen in his home and injured his right ankle and back. He quickly changed his story to the occurrence being work related."
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> "During the interview, numerous inconsistencies were noted as to the alleged incidents. In subsequent personal appearances by [appellant] to our facility, it was noted [that] his left ankle was in a brace, not the right ankle as originally indicated."

In response to questions posed by the Office of Workers' Compensation Programs by letter dated January 27, 2003, appellant explained the two-week delay in filing his claim by

noting that the injury was reported when it occurred, but that the employing establishment delayed giving him the Form CA-1 "till Jeanette Gross At NCS Pearson contacted them." Appellant indicated that he strained his ankle when going to his car in the parking lot and that he fell due to his ankle injury, further injuring his back.

Appellant submitted a September 23, 2002 progress note, by a physician whose signature and affiliation are illegible, indicating that appellant stated that he hurt his left ankle and back at work.

On March 20, 2003 a supervisor for the employing establishment had a telephone conference with the Office claims examiner. The supervisor explained that the checkpoint was inside the airport terminal where appellant worked as a screener and that, if appellant had been injured, there would have been 50 to 60 individuals who would have witnessed the injury. He further stated that the employee parking lot was about a quarter of a mile away. The supervisor advised that on the date of the alleged injury, appellant "signed out at 21:00 hours." He indicated no one directed him to go to the parking lot at the time of the injury and that at the time of the alleged injury, he was supposed to be working. The supervisor indicated that appellant had advised him that at the time of the injury he was on a break but that it was not a normal practice to take a break 10 minutes before the end of one's tour. He advised that appellant did not ask or inform anyone that he was going on break or going out to his car. The supervisor stated: "At the time [appellant] alleges being injured, he was required to be at the employing establishment performing his duties as a screener." Finally, the supervisor indicated that appellant did not make a report at the time of the incident, either verbally or in writing and that there were no witnesses to the accident.

By decision dated April 9, 2003, the Office denied appellant's claim for compensation as it found that fact of injury was not established. The Office noted the factual evidence was insufficient to establish that an incident occurred on the date, time and in the manner alleged.

The Board finds that the evidence of record fails to support that appellant sustained an injury in the performance of duty on September 17, 2002 as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

In a traumatic injury case, the employee must establish by the weight of reliable, probative and substantial evidence, the occurrence of an injury in the performance of duty at the time, place and in the manner alleged and that the injury resulted from a specific event or incident.[4] The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged or if the evidence establishes that the specific event or incident to which the employee attributes the injury was not in the performance of duty.[5] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established his or her claim.[6] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[7]

Appellant has not met his burden of proof in that there are inconsistencies in his explanation as to how the alleged injury occurred. In his claim form, appellant stated that his injury took place at the checkpoint and at the "E-Lot." However, the checkpoint is inside the airport terminal and the employee's parking lot is located about a quarter of a mile away. There were no witness statements and if appellant was injured at the checkpoint, the employing establishment noted that there would have been numerous witnesses. Appellant's regular work hours were listed as 12:30 to 21:00. The employing establishment states that appellant signed out on the date of the alleged injury at 21:00. However, appellant listed the time of his injury as 20:50. The employing establishment noted that appellant should have been working at this time. Although the employing establishment noted that appellant stated that he was on a break, the employing establishment noted it was not normal practice to take a break in the last 10 minutes of a tour of duty. The employing establishment also noted that appellant did not inform anyone that he was going on break and that no one sent appellant to the parking lot for any employment-related purpose. In addition, appellant originally related to his employer that he had fallen at home. All of these inconsistencies, combined with the fact that appellant did not file a claim until two weeks after the alleged incident, lead to the conclusion that appellant did not sustain an injury at the time, place and in the manner alleged. Accordingly, the Office properly found that appellant failed to meet his burden of proof with regard to fact of injury and properly denied appellant's claim.

[4] *Thelma Rogers*, 42 ECAB 866, 869 (1991).

[5] *Elaine Pendleton*, *supra* note 2.

[6] *Thelma Rogers*, *supra* note 4; *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[7] *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

The decision of the Office of Workers' Compensation Programs dated April 9, 2003 is hereby affirmed.

Dated, Washington, DC
October 14, 2001

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member